

SERVICE DATE – FEBRUARY 8, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35661

GRAND TRUNK WESTERN RAILROAD COMPANY—ACQUISITION OF OPERATING
EASEMENT—CSX TRANSPORTATION, INC.

Digest:¹ This decision allows Grand Trunk Western Railroad Company to acquire an operating easement over a rail line owned by CSX Transportation, Inc. near Memphis, Tennessee, subject to standard employee protective conditions.

Decided: February 4, 2013

On August 13, 2012, Grand Trunk Western Railroad Company (GTW) filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements at 49 U.S.C. §§ 11323-25 to acquire from CSX Transportation, Inc. (CSXT) an operating easement over approximately 2.1 miles of CSXT's Memphis Terminal Subdivision, between Leewood, Tenn., milepost 00F371.4, and Aulon, Tenn., milepost 00F373.4 (Leewood-Aulon Line or Line). GTW plans to acquire this easement and, in return, convey to CSXT an easement over a GTW line in the Chicago, Ill. area. We will grant GTW's petition for exemption, subject to standard employee protective conditions.²

BACKGROUND

GTW is an indirect, wholly-owned subsidiary of Canadian National Railway Company (CNR). Illinois Central Railroad Company (IC) is also an indirect, wholly-owned subsidiary of CNR. CNR and its affiliates (collectively, CN) operate a rail system of approximately 20,000 route miles in the United States and Canada.

As described in GTW's petition, CN's principal north-south route is owned and operated by IC and runs between Chicago, Ill., in the north and New Orleans, La., in the south, via Champaign, Ill., Memphis, Tenn., and Jackson, Miss. The line splits at Woodstock, Tenn., north

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Today, we are also granting authority for CSXT's easement acquisition in the Chicago area. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, et al. (STB served February 8, 2013).

of Memphis, into two parallel north-south lines that join again at West Junction, Tenn., south of Memphis. The parallel line to the west runs through downtown Memphis and is used for CN traffic moving to or from yards, origins and destinations, and interchange points located along that line. The parallel line to the east runs around Memphis and is used for the remainder of CN's traffic around Memphis, including most of CN's north-south through traffic and traffic moving to or from Harrison Yard. For approximately 2.1 miles, this route around Memphis runs over the Leewood-Aulon Line.

CSXT owns, dispatches, and maintains the Leewood-Aulon Line. IC, a GTW affiliate, operates over it via trackage rights and is the primary user. GTW notes that the Leewood-Aulon Line is an essential link for CN's north-south traffic.

Under the proposed transaction, GTW would acquire an exclusive, perpetual, non-assignable railroad operating easement over the Line. According to GTW's petition, although IC, as opposed to GTW, currently operates over the Leewood-Aulon Line, the parties are structuring the transaction as a grant to GTW rather than IC, so that the easement swap will qualify as a like-kind exchange under the Internal Revenue Code. GTW would also assume responsibility for dispatching, track maintenance, and capital improvements for the Line, including all interlockings, control points, and connections, including those at Leewood and Aulon themselves. Although GTW, as owner of the easement, would have the right to operate over the Line, it expects that rail operations on behalf of CN would continue to be provided by IC under its existing trackage rights agreement and/or under a further agreement with GTW. CSXT would retain local and overhead trackage rights over the Line.

GTW's easement acquisition is one part of an Agreement for Exchange of Perpetual Easements between GTW and CSXT.³ In exchange for GTW's acquiring an easement from CSXT over the Leewood-Aulon Line, GTW would grant CSXT an exclusive, perpetual, non-assignable railroad operating easement over 22.37 miles of GTW track in the Chicago area, specifically on the Elsdon Subdivision, between the connection with CSXT at Munster, Ind., milepost 31.07, and Elsdon, Ill., milepost 8.7, which connects to the southern end of the BNSF Railway Company's Corwith Yard (Elsdon Line). CSXT currently operates over the Elsdon Line via trackage rights.⁴ GTW would retain local and overhead trackage rights over the Elsdon Line. CSXT would convey local and overhead trackage rights over the Elsdon Line to a number of GTW's affiliates and to a CSXT subsidiary, the Baltimore & Ohio Chicago Terminal Railroad Company. On August 13, 2012, the same day GTW filed its petition for exemption in this docket, CSXT filed an application in Docket No. FD 35522, pursuant to 49 U.S.C. § 11323(a)(2) and 49 C.F.R. pt. 1180, seeking approval for its proposed easement acquisition over the Elsdon

³ See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, Application, Vol. 2 (filed Aug. 13, 2012). Volume 2 includes this agreement and a number of related agreements.

⁴ See CSX Transp., Inc.—Trackage Rights Exemption—Grand Trunk W. R.R., FD 35346 (STB served Feb. 12, 2010).

Line.⁵ Notices of exemption were also filed in two embraced subdockets for CSXT's grants of trackage rights over the Elsdon Line.⁶

On September 12, 2012, the Board issued decisions in both this docket and Docket Nos. FD 35522 et al. concerning the parties' easement exchange. In Docket Nos. FD 35522 et al., the Board accepted CSXT's application to acquire an operating easement over the Elsdon Line and the related notices of exemption. The Board, among other things, also established a procedural schedule for those proceedings. Because the proceedings involving the Elsdon Line are related to the acquisition of the operating easement over the Leewood-Aulon Line, the Director of the Office of Proceedings established a similar procedural schedule in the September 12, 2012 decision instituting this proceeding.

The American Train Dispatchers Association (ATDA) filed a comment in this docket on November 8, 2012. ATDA takes no position on the merits of the transaction, but asks that the Board impose the labor protective conditions provided by New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799 (1990) (New York Dock). ATDA also asks that we expressly state that those conditions are to be applied to the affected train dispatchers and that we take notice of comments it filed in Docket No. FD 35522. CSXT and GTW filed separate replies to ATDA on November 29, 2012.

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to acquire and operate the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation if it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. CSXT would retain trackage rights over the Line for both overhead and local traffic, thus retaining the ability to

⁵ See CSX Transp. Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522 (application filed Aug. 13, 2012). Volume 2 of the application filed in Docket No. FD 35522 includes the agreement for GTW's easement over the Leewood-Aulon Line and the agreement for CSXT to retain trackage rights over the Line.

⁶ See Balt. & Ohio Chi. Terminal R.R.—Trackage Rights Exemption—CSX Transp., Inc., FD 35522 (Sub-No. 1) (verified notice of exemption filed Aug. 13, 2012, in volume 3 of the application in FD 35522); Chi., Cent. & Pac. R.R., Elgin, Joliet & E. R.R., Ill. Cent. R.R., & Wisc. Cent. Ltd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35522 (Sub-No. 2) (verified notice of exemption filed Aug. 13, 2012, in volume 3 of the application in FD 35522).

serve all routes and shippers that it serves today.⁷ Furthermore, IC, GTW's affiliate, would have full operational rights on and over the Line and would continue to provide local and overhead service. This acquisition would, therefore, not result in undue concentration of market power. See 49 U.S.C. § 10101(12).⁸ Additionally, an exemption from the application process would expedite regulatory action and reduce regulatory barriers to entry and exit, in accordance with §§ 10101(2) and (7). The exemption would allow the primary user of the Line to assume responsibility for maintenance, dispatching, and capital improvements, thus promoting a safe and efficient rail transportation system, see § 10101(3), fostering sound economic conditions, see § 10101(5), and encouraging efficient management of railroads, see § 10101(9). Other aspects of the rail transportation policy would not be adversely affected by use of the exemption process.

Regulation of the proposed transaction is not needed to protect shippers from the abuse of market power. Shippers would continue to have the option of shipping via IC, GTW's affiliate, because IC would provide local and overhead service through the operating easement possessed by GTW. Shippers would also continue to be able to receive service from CSXT through the local and overhead trackage rights it is retaining over the Line. Given our market power finding, we need not determine whether the acquisition of the operating easement over the Leewood-Aulon Line is limited in scope.

ATDA asks that we impose the New York Dock labor protective conditions and that we expressly state that those conditions are to be applied to CSXT and GTW train dispatchers. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions established in New York Dock. As those conditions apply to any adversely affected employee, see Wilmington Terminal 6 I.C.C. 2d at 819, it is unnecessary to single out train dispatchers in imposing these conditions.⁹

This transaction is exempt from the need to undertake an environmental review because it would not result in a significant change in carrier operations.¹⁰ Similarly, the transaction is exempt from the historic review process under 49 C.F.R. § 1105.8(b)(1) because, according to GTW, there are no plans to alter railroad properties 50 years old or older, and GTW's acquisition

⁷ As we noted in the decision instituting this proceeding, CSXT has agreed to retain trackage rights that would limit the total number of its trains operating over the Leewood-Aulon Line to 16 trains per day, but the parties may agree to increase that number.

⁸ As discussed in the decision we are serving today in Docket Nos. FD 35522 et al., the Chicago part of this easement swap would not have significant anticompetitive effects, and both transactions, when considered together, would not have a significant anticompetitive effect.

⁹ ATDA asks the Board to take notice of the comments it filed concerning the Elsdon Line in Docket No. FD 35522. We discuss that filing in the decision we are serving today in that docket.

¹⁰ Generally, an increase of 3 or 8 trains per day depending on whether the area is in attainment under the Clean Air Act. See 49 C.F.R. §§ 1105.6(c)(2)(i), 1105.7(e)(4), and (5).

of the operating easement over the Line is for continued rail operations; thus, further Board approval would be required to abandon or discontinue service over the Line.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. §§ 11323-25, subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799 (1990).

3. Notice will be published in the Federal Register on February 8, 2013.

4. The exemption will become effective on March 10, 2013.

5. Petitions to stay must be filed by February 19, 2013. Petitions to reopen must be filed by February 28, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.